IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION 1255 OF 2004

Union of India .. Petitioner
Versus
State of Maharashtra .. Respondent

Mr.Deepak Salvi for applicant
Mr.Vijaykumar & Co. for respondent

CORAM : S.C.DHARMADHIKARI, J.
DATE : 22nd December 2005.

P.C.

. Heard Mr.Salvi for petitioner and learned A.P.P. for first respondent. Presence of second respondent is not necessary for disposing of this petition.

2. Misc.Application No.74 of 2003 in Special Case No.36 of 2000 was filed by the petitioners Union of India, Income Tax Officer for a

permission to sell the properties for recovery of income tax from accused. It appears that properties have been attached in proceedings under M.P.I.D.Act. However, the same are also subject matter of attachment under the Income Tax Act. Learned Special Judge has taken a view that application of the Income Tax department cannot be granted in the light of the provisions of M.P.I.D. Act and pendency of proceedings under the same.

3. None disputes the subsequent position emerging after filing of this petition i.e. declaration by a Full Bench of this Court that M.P.I.D. Act is unconstitutional, ultra vires and of no legal effect. Full Bench decision is subject matter of an appeal which is pending before the Supreme Court. The Supreme Court has permitted by an interim order, the attachment to continue until further orders of the Supreme Court. However, applications for release of

attachment wherever filed have to be disposed of in accordance with law by separate orders. Authorities are restrained from taking coercive steps to recover the amount under the Act. Similarly, the Supreme Court directs that there shall not be sale of attached properties.

4. In the light of the position emerging as noted above, in my view, proper course would be to permit petitioners to once again move appropriate court for appropriate reliefs including which were prayed earlier and upon such application being made, the Court concerned to decide the same in accordance with law and uninfluenced by the earlier order dated 23rd July 2003. Equally, it would be open for the authorities exercising powers under the Income Tax Act to approach Supreme Court and apply for necessary reliefs in the pending appeals. Petition disposed of.

(S.C.DHARMADHIKARI, J)